

Message Text

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ACTION EUR-12

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UNCLAS SECTION 1 OF 2 STRASBOURG 26/1

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TAGS: COE, SHUM, UK, EI, PINS.
SUBJECT: EUROPEAN HUMAN RIGHTS COURT HANDS DOWN DECISION IN
IRELAND V. UNITED KINGDOM.

REF: A) STRASBOURG A-22 (77) B) STRASBOURG A-44 (77)

1. SUMMARY: THE EUROPEAN COURT OF HUMAN RIGHTS IN STRASBOURG
HANDED DOWN ITS LONG AWAITED DECISION JANUARY 18 IN A CASE IN
WHICH IRELAND HAD ACCUSED THE UNITED KINGDOM OF VIOLATING
SEVERAL ARTICLES OF THE EUROPEAN CONVENTION FOR THE PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS THROUGH THE EFFORTS
USED BY U.K. SECURITY FORCES IN ATTEMPTING TO CONTROL TERRORISM
IN NORTHERN IRELAND IN THE EARLY 1970S. ALTHOUGH ALL BUT ONE
OF THE COURT'S SEVENTEEN JUDGES RULED THAT THE UK HAD PRACTICED
QUOTE INHUMAN AND DEGRADING TREATMENT UNQUOTE IN INTERROGATING
ULSTER DETAINEES, THE USE OF THESE INTERROGATION TECHNIQUES DID
NOT FULFILL THE COURT'S DEFINITION OF THE MORE SERIOUS CHARGE
OF TORTURE. MOREOVER, THE COURT REJECTED OTHER IRISH CHARGES
THAT THE U.K. HAD ALSO VIOLATED OTHER ARTICLES OF THE CONVENTION.
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END SUMMARY.

2. AFTER FIVE YEARS OF DELIBERATIONS, THE EUROPEAN COURT OF
HUMAN RIGHTS IN STRASBOURG RENDERED JANUARY 18 A FINAL JUDGE-
MENT IN IRELAND V. UNITED KINGDOM, THE FIRST "INTER-STATE"
CASE TO BE DECIDED BY THE COURT SINCE ITS CREATION IN 1959. IN
ITS DECEMBER 1971 APPLICATION TO THE EUROPEAN COMMISSION OF

HUMAN RIGHTS, THE COURT'S INVESTIGATIVE BODY, THE IRISH GOVERNMENT ALLEGED THE UNITED KINGDOM HAD VIOLATED CERTAIN ARTICLES OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE COURSE OF ITS SECURITY OPERATIONS DURING THE EMERGENCY SITUATION IN NORTHERN IRELAND BETWEEN 1971 AND 1974. ESSENTIALLY IRELAND CLAIMED THAT MANY PERSONS TAKEN INTO CUSTODY BY U.K. SECURITY FORCES UNDER THE EMERGENCY POWERS IN EFFECT DURING THIS PERIOD HAD BEEN ILL TREATED IN THE COURSE OF INTERROGATION. ACCORDING TO THE IRISH COMPLAINT, THE COMBINED USE OF CERTAIN PROCEDURES, THE SO-CALLED FIVE TECHNIQUES (WALL-STANDING, HOODING, SUBJECTION TO NOISE, DEPRIVATION OF SLEEP, AND THE DEPRIVATION OF FOOD AND DRINK), DURING THE INTERROGATION OF CERTAIN PEOPLE AMOUNTED TO A PRACTICE OF INHUMAN TREATMENT AND TORTURE IN VIOLATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION.

THE IRISH ALSO ALLEGED THAT THE SUSPENSION OF CERTAIN RIGHTS IN AN EMERGENCY BY THE U.K. AUTHORITIES TO COMBAT TERRORISM IN NORTHERN IRELAND EXCEEDED THE LIMITS ALLOWED UNDER SEVERAL ARTICLES OF THE EUROPEAN CONVENTION. FURTHERMORE, IT WAS CLAIMED THAT THE U.K. HAD VIOLATED ARTICLE 14 OF THE CONVENTION DISCRIMINATING IN THE USE OF THESE EMERGENCY POWERS AGAINST THE IRA MORE THAN AGAINST LOYALIST TERRORISTS.

3. THE CASE WAS BROUGHT BEFORE THE HUMAN RIGHTS COURT AFTER FOUR YEARS OF INVESTIGATION BY THE HUMAN RIGHTS COMMISSION WHICH CONCLUDED IN 1976 THAT SOME OF THE ALLEGATIONS SET FORTH IN THE UNCLASSIFIED

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ORIGINAL IRISH SUIT WERE SUBSTANTIAL ENOUGH TO BE CONSIDERED BY THE COURT. TWO PUBLIC HEARINGS LAST YEAR EXTENSIVELY DISCUSSED THE FACTS OF THE CASE, THE SCOPE AND THE EXERCISE OF THE COURT'S JURISDICTION, AND ALLOWED BOTH SIDES TO PRESENT ARGUMENTS AND REBUTTALS. ITS RULING WAS PUBLICLY DELIVERED ON BEHALF OF THE COURT'S SEVENTEEN JUDGES BY COURT PRESIDENT BALLADORE PALLIERI OF ITALY. JOURNALISTS FROM MOST EUROPEAN COUNTRIES, INCLUDING THE SOVIET UNION, ATTENDED THE OPEN SESSION.

4. IN ITS FINAL RULING, THE COURT, BY A VOTE OF SIXTEEN TO ONE, AGREED WITH ITS COMMISSION'S RULING THAT THE USE OF THE FIVE TECHNIQUES AGAINST ULSTER DETAINEES IN AUGUST AND OCTOBER 1971 CONSTITUTED A PRACTICE OF INHUMAN AND DEGRADING TREATMENT IN VIOLATION OF ARTICLE 3 OF THE CONVENTION WHICH PROHIBITS THE USE OF TORTURE OR INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. THE UNQUALIFIED PROMISE MADE BEFORE THE COURT IN ITS FEBRUARY 1977 PUBLIC SESSION BY U.K. ATTORNEY GENERAL SILKIN, STATING THAT THE FIVE TECHNIQUES WOULD NOT BE REINTRODUCED UNDER ANY CIRCUMSTANCES AS AN AID TO INTERROGATION WAS NOTED. THE MANY OTHER MEASURES TAKEN SUBSEQUENTLY BY THE U.K. TO PREVENT A REPETITION OF THESE ACTIONS, SUCH AS POLICE AND ARMY INSTRUCTIONS

ON ARREST AND INTERROGATION PROCEDURES, AND PRISONER COMPLAINT PROCEDURES, AND TO PAY COMPENSATION TO MISTREATED PRISONERS WERE LAUDED. THE COURT, HOWEVER, REFUSED TO DROP THIS COMPLAINT IN VIEW OF THESE U.K. INITIATIVES SINCE ITS JUDGMENTS NOT ONLY DECIDE CASES, BUT ALSO CLARIFY, DEVELOP, AND SAFEGUARD THE RULES OF THE EUROPEAN HUMAN RIGHTS CONVENTION, SO THAT THEY WILL BE OBSERVED BY THE MEMBER STATES.

5. IN THE ONLY MAJOR DEVIATION FROM THE COMMISSION'S RECOMMENDATIONS, THE JUDGES DECIDED, THIRTEEN TO FOUR, THAT THE USE OF THESE INTERROGATION TECHNIQUES, ALTHOUGH CONDEMNED AS A MAJOR BREACH OF THE CONVENTION, WAS NOT SEVERE ENOUGH TO BE CONSIDERED TORTURE UNDER THE COURT'S UNDERSTANDING OF THAT WORD. A 1975 UN GENERAL ASSEMBLY RESOLUTION WAS CITED, DESCRIBING TORTURE UNCLASSIFIED

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AS QUOTE AN AGGRAVATED AND DELIBERATE FORM OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT UNQUOTE. THUS, THE COURT REASONED THAT ALTHOUGH THE FIVE TECHNIQUES UNDOUBTEDLY AMOUNTED TO INHUMAN AND DEGRADING TREATMENT, THEY DID NOT OCCASION SUFFERING OF THE PARTICULAR INTENSITY AND CRUELTY IMPLIED BY THE WORD TORTURE AS SO UNDERSTOOD. THE COURT ALSO RULED THAT IT DID NOT HAVE THE POWER TO FORCE THE U.K. TO INSTITUTE CRIMINAL OR DISCIPLINARY PROCEEDINGS AGAINST MEMBERS OF THE U.K. SECURITY POLICE WHO HAD USED THE FIVE TECHNIQUES.

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6. THE COURT ALSO DENIED THE IRISH CHARGE THAT THE U.K. IN ITS EXERCISE OF EMERGENCY POWERS VIOLATED ARTICLE 5 OF THE EUROPEAN CONVENTION WHICH LISTS THE CASES UNDER WHICH A PERSON MAY BE DEPRIVED OF HIS LIBERTY OR SECURITY AND HAD ALSO GONE BEYOND THE LIMITED SUSPENSION OF THESE GUARANTEES WHICH IS ALLOWED TO A NATION IN TIME OF WAR OR OTHER PUBLIC EMERGENCY THREATENING THE LIFE OF THE NATION UNDER ARTICLE 15. THE COURT SAID THAT THE NORTHERN IRELAND EMERGENCY CLEARLY CONSTITUTED A SITUATION AS ENVISAGED UNDER ARTICLE 15 AND, AFTER REVIEWING THE MEASURES TAKEN BY THE U.K. BETWEEN AUGUST 1971 AND MARCH 1975 IN LIGHT OF THE EXISTING CIRCUMSTANCES, RULED THAT HER ACTIONS HAD NOT OVERSTEPPED THE LIMITS ACCEPTED BY THE CONVENTION. ALTHOUGH THESE REGULATIONS MAY HAVE BEEN SEVERELY APPLIED INITIALLY THE COURT CONCLUDED THAT THE U.K. GOVERNMENT AND PARLIAMENT HAD LOST LITTLE TIME IN MODERATING THEIR IMPLEMENTATION SO THAT THERE WAS A CONTINUAL EVOLUTION IN THE DIRECTION OF INCREASING RESPECT FOR INDIVIDUAL LIBERTY. TO THE CHARGE THAT THESE EMERGENCY MEASURES WERE MORE SEVERELY APPLIED TOWARDS THE IRA THAN LOYALIST TERRORISTS, THE COURT FOUND THAT THERE WERE PROFOUND DIFFERENCES BETWEEN LOYALIST AND REPUBLICAN TERRORISM. DURING UNCLASSIFIED

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THE PERIOD IN QUESTION, THE IRA , WITH ITS FAR MORE STRUCTURED ORGANIZATION, CONSTITUTED A FAR MORE SERIOUS MENACE TO SECURITY THAN THE LOYALIST GROUPS. LOYALIST ACTIONS WERE SEEN BY AUTHORITIES AS THE SPORADIC WORK OF INDIVIDUALS OR ISOLATED FACTIONS. FURTHERMORE, IT WAS GENERALLY EASIER TO INSTITUTE CRIMINAL PROCEEDINGS AGAINST LOYALIST TERRORISTS THAN THE IRA. THUS, THE COURT BELIEVED THAT THE BRITISH GOAL PURSUED AT THAT TIME -- THE ELIMINATION OF THE MOST POWERFUL ORGANIZATION (IRA) FIRST -- WAS LEGITIMATE, AND THE MEANS USED NOT DISPROPORTIONATE.

7. FULL TEXT OF THE COURT'S JUDGMENT WILL BE AIR POUCHED TO THE DEPARTMENT, LONDON, DUBLIN AND BELFAST WHEN COPIES ARE AVAILABLE HERE.KURZE

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